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March 29, 1991

Terry Vawter, Marketing Specialist  
California Marketing Field Office  
U.S. DEPARTMENT OF AGRICULTURE  
2202 Monterey, Suite 102B  
Fresno, CA 93721

Re: Property Tax Exemption of Property Owned by  
Marketing Committees Established by the  
United States Department of Agriculture

Dear Terry Vawter:

This is in response to your letter dated March 6, 1991. You ask whether property in California owned by Marketing Committees established by the United States Department of Agriculture is exempt from local property taxation. As we will explain below, we have concluded that such Marketing Committees are instrumentalities of the United States Government and therefore, are exempt from local property taxation.

### Facts

We understand:

"The California Marketing Field Office is given the task of administering the seventeen marketing orders which are in operation in California and Hawaii. The Committees include: Valencia and navel oranges, lemons, nectarines, peaches, plums, pears, kiwifruit, grapes grown in the Coachella valley, Tokay grapes, papayas grown in Hawaii, olives, almonds, walnuts, dates, raisins, and prunes."

We further understand that the Committees are unincorporated instrumentalities of the United States, created under the authority of Title 7 of the Code of Federal Regulations (7 CFR) as follows:

<u>Committee</u>	<u>Section</u>
Navel Orange Administrative Committee	907.20
Valencia Orange Administrative Committee	908.20
Lemon Administrative Committee	910.20
Nectarine Administrative Committee	916.20
Pear Commodity Committee	917.20
Peach Commodity Committee	917.20
Plum Commodity Committee	917.20
Kiwifruit Administrative Committee	920.20
California Desert Grape Administrative Committee	925.20
Tokay Industry Committee	926.20
Winter Pear Control Committee	927.20
California Olive Committee	932.25
Oregon-California Potato Committee	947.25
Almond Board of California	981.30
Walnut Marketing Board	984.35
California Date Administrative Committee	987.16
Raisin Administrative Committee	989.23
Prune Marketing Committee	993.24

#### Law and Analysis

Title 7 of the United States Code Annotated §602 provides that it is the policy of Congress through the Secretary of Agriculture, to (1) establish and maintain orderly marketing conditions for agricultural commodities in interstate commerce, (2) protect the interests of the consumer, (3) establish production and marketing research, (4) establish and maintain orderly marketing conditions throughout a normal marketing season, and (5) to continue for the remainder of any marketing season such regulation. In furtherance of such authority, the Secretary of Agriculture has established regulations to create the above-described Committees (7 CFR). As so created, these Committees become instrumentalities of the United States Government. The test for determining whether an entity is a federal instrumentality for purposes of protection from state or local action for taxation is very broad and is determined by whether the entity performs an important governmental function (Louis v. United States, 680 Fed. 2d 1239, 1241 (1982)). Applying this test, it appears to us that the above-described Committees are clearly federal instrumentalities. Property held by a federal instrumentality is exempt from local taxation unless Congress affirmatively provides otherwise (Rohr Aircraft

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Corporation v. San Diego County, 362 U.S. 628; U.S. v. San Diego County, 249 Fed. Supp. 321). Any direct tax on a federal instrumentality or on the Federal Government is unconstitutional unless authorized by Congress (C.R. Frederick, Inc. v. State Board of Equalization, 39 Cal. App. 3d 385). Our research did not disclose any Congressional authorization which would subject property owned by Marketing Committees to local taxation. We, therefore, conclude that such property is exempt from local taxation.

#### Conclusion

In sum, Committees established by the United States Department of Agriculture under 7CFR are instrumentalities of the United States Government. As such, the Committees are exempt from local taxation unless local taxation is specifically authorized by Congress.

The views expressed in this letter are, of course, advisory only and are not binding upon the assessor of any county. You may wish to consult the appropriate assessor in order to confirm that the subject property will be assessed in a manner consistent with the conclusion stated above.

Our intention is to provide timely, courteous and helpful responses to inquiries such as yours. Suggestions that help us to accomplish this goal are appreciated.

Very truly yours,



Robert R. Keeling  
Tax Counsel

RRK:ta

3108D

cc: Mr. John W. Hagerty  
Mr. Verne Walton

Terry Vawter, Marketing Specialist

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